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Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2006 64728

SYLVIA MARITZA SMISER, PT  
1084 North Pointe Dr  
Normal IL 61761

**ACCUSATION**

Physical Therapist License No. PT 29147

Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about February 4, 2004, the Physical Therapy Board of California issued Physical Therapist License No. PT 29147 to Sylvia Maritza Smiser (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2008, unless renewed.

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3. This Accusation is brought before the Physical Therapy Board of

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

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(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

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(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

7. Section 2661.5 of the Code states:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of the assessed costs specified in the proposed decision.

(c) When the payment directed in an order for payment of costs is not made by the licensee, the board may enforce the order of payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license or approval of any person who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license or

1 approval of any person who demonstrates financial hardship and who enters into a  
2 formal agreement with the board to reimburse the board within that one year  
3 period for those unpaid costs.

4 (f) All costs recovered under this section shall be deposited in the  
5 Physical Therapy Fund as a reimbursement in either the fiscal year in which the  
6 costs are actually recovered or the previous fiscal year, as the board may direct.

7 **FIRST CAUSE FOR DISCIPLINE**

8 \_\_\_\_\_ (Conviction of a Misdemeanor)  
[Bus. & Prof. Code § 2660(d)]

9 8. Respondent is subject to disciplinary action under section 2660(d) of the  
10 Code in that on or about September 6, 2006, Respondent was convicted of misdemeanor petty  
11 theft (Penal Code section 484(a)) in the California Superior Court of Ventura County.  
12 Respondent pled nolo contendere and was sentenced to pay a \$250.00 fine, a \$20.00 security fee,  
13 and a \$100.00 State Restitution Fund fee.

14 9. The underlying circumstances of this conviction were that on June 20,  
15 2006, a J.C. Penney's loss prevention officer observed Respondent walk out of the J.C. Penny  
16 store with merchandise for which she had not paid. The loss prevention officer contacted  
17 Respondent outside the store and discovered merchandise priced at \$103.98 on Respondent's  
18 person. The Ventura Police were called and Respondent was issued a citation for violation of  
19 Penal Code section 484(a) on a promise to appear in court.

20 **SECOND CAUSE FOR DISCIPLINE**

21 \_\_\_\_\_ (Conviction of a Misdemeanor)  
[Bus. & Prof. Code §§ 2660(i) and 2236(d)]

22 10. Complainant re-alleges paragraphs 8 and 9 above, and incorporates them  
23 by reference herein as if fully set forth at this point.

24 11. Respondent is subject to disciplinary action under sections 2660(i) and  
25 2236 of the Code in that she was convicted of misdemeanor petty theft (Penal Code section  
26 484(a)).

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Physical Therapy Board of California issue a  
4 decision:

5 1. Revoking or suspending Physical Therapist License No. PT 29147, issued  
6 to Sylvia Maritza Smiser, PT;

7 2. Ordering Sylvia Maritza Smiser to pay the Physical Therapy Board the  
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
9 Professions Code section 2661.3;

10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: April 17, 2007

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15 Original Signed By:  
16 STEVEN K. HARTZELL  
17 Executive Officer  
18 Physical Therapy Board  
19 Department of Consumer Affairs  
20 State of California, Complainant

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Smiser Accusation.wpd